



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DEC 26 2007

BY U.S. MAIL

Ezra Reese, Esq.
Perkins Coie
607 14th Street, N.W.
Washington, DC 20005

RE: MUR 5646
Cohen for New Hampshire and John Buchalski,
in his official capacity as treasurer

Dear Mr. Reese:

On December 17, 2007, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of your clients, Cohen for New Hampshire and John Buchalski, in his official capacity as treasurer ("the Committee"), in settlement of violations of 2 U.S.C. §§ 441i(e)(1)(A), 434(b), 432(c), 432(h) and 439a(b), provisions of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 110.3(d), a provision of the Commission's regulations. Accordingly, the file has been closed in this matter as it pertains to the Committee.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the effective date of the conciliation agreement. If you have any questions, please contact me, or in my absence, co-counsel Ana Pefia Wallace, at (202) 694-1650.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dawn M. Odrowski".

Dawn M. Odrowski
Attorney

Enclosure
Conciliation Agreement

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 Cohen for New Hampshire and John Buchalski,) MUR 5646
6 in his official capacity as treasurer)
7
8

9 **CONCILIATION AGREEMENT**

10
11 This matter was generated based on information ascertained by the Federal Election
12 Commission ("the Commission") in the normal course of carrying out its supervisory
13 responsibilities. See 2 U.S.C. § 437g(a)(2). Following an investigation, the Commission found
14 probable cause to believe that Cohen for New Hampshire and John Buchalski, in his official
15 capacity as treasurer, violated 2 U.S.C. §§ 441i(e)(1)(A), 434(b), 432(c), 432(h) and 439a(b) and
16 11 C.F.R. § 110.3(d).

17 NOW, THEREFORE, the Commission and Cohen for New Hampshire and John
18 Buchalski, in his official capacity as treasurer ("Respondents" or "the Committee"), having duly
19 entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

20 I. The Commission has jurisdiction over Respondents and the subject matter of this
21 proceeding.

22 II. Respondents have had a reasonable opportunity to demonstrate that no action
23 should be taken in this matter.

24 III. Respondents enter voluntarily into this agreement with the Commission.

25 IV. The pertinent facts in this matter are as follows:

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Background

1. Burton Cohen (the "Candidate") was a candidate, within the meaning of 2 U.S.C. § 431(2), for the 2004 U.S. Senate election in New Hampshire. Cohen dropped out of the U.S. Senate race on June 10, 2004, before the primary election.

2. Cohen for New Hampshire ("the Committee") is a political committee within the meaning of 2 U.S.C. § 431(4) and was the principal campaign committee for Burton Cohen during the 2004 election cycle.

3. At all relevant times, Jesse Burchfield, the campaign manager performed the duties of treasurer for the Committee.¹

Law

4. The Federal Election Campaign Act of 1971, as amended, ("the Act") requires a committee treasurer to file with the Commission periodic reports of receipts and disbursements. 2 U.S.C. § 434(a). Each report shall disclose, among other things, the amount of cash on hand at the beginning of a reporting period, total receipts, and for each contribution aggregating in excess of \$200 within an election cycle, the name and address of the contributor and the date and amount of the contribution. See 2 U.S.C. § 434(b)(1), (2), and (3)(A). Each report shall also disclose the total disbursements and the name and address of each person to whom any disbursement aggregating in excess of \$200 in an election cycle is made, together with the date, amount and purpose of the disbursement. See 2 U.S.C. § 434(b)(4), (5), and (6)(A).

5. The Act also requires a committee treasurer to keep an account of the name and address of every person to whom a disbursement is made, together with the date, amount and

¹ John Buchalski, the official treasurer named in the Committee's Statement of Organization, had no role in the Committee except to sign the first two Committee disclosure reports, and amendments thereto, that Burchfield prepared. Burchfield signed Buchalski's name to subsequent disclosure reports.

1 purpose of the disbursements made by the committee and to keep copies of receipt invoices or
2 cancelled checks for all disbursements that exceed \$200. 2 U.S.C. § 432(c)(5).

3 6. The Act further prohibits a federal candidate, a candidate's agent, and entities
4 established, financed, maintained or controlled by, or acting on behalf of, a candidate from
5 soliciting, receiving, directing, transferring or spending funds in connection with a Federal
6 election unless the funds are subject to the limitations, prohibitions and reporting requirements of
7 the Act. 2 U.S.C. § 441i(e)(1)(A). Moreover, Commission regulations specifically prohibit
8 transfers of funds or assets from a candidate's account for a non-federal election to his or her
9 principal campaign committee for a federal election. 11 C.F.R. § 110.3(d).

10 7. In addition, the Act prohibits any person from converting contributions or
11 donations to personal use. 2 U.S.C. § 439a(b). *See also* 2 U.S.C. § 431(11) (defining "person"
12 under the Act to include individuals and committees). Examples of per se instances of improper
13 personal use include using campaign funds for clothing purchases. 2 U.S.C. § 439a(b)(2)(B).

14 8. Finally, the Act requires political committees to make disbursements in excess of
15 \$100 by check drawn on a Committee account. 2 U.S.C. § 432(h)(1). The sole exception to this
16 requirement is cash disbursements of \$100 or less, which may be made from a petty cash
17 account. 2 U.S.C. § 432(h)(2). A record of all petty cash disbursements must be maintained in
18 accordance with 2 U.S.C. § 432(c).

19 The Impermissible Use of State Campaign Funds in a Federal Campaign

20 9. The Candidate hired Jesse Burchfield in 2002 to be the campaign manager for his
21 re-election campaign to the New Hampshire state senate. As state campaign manager,
22 Burchfield performed the compliance functions for the state campaign, including completing

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1 disclosure reports. As a result of the Candidate's successful re-election, the Candidate hired
2 Burchfield to work as the campaign manager for the Committee.

3 10. During the state campaign, the Candidate and Burchfield agreed to raise more
4 funds than the Candidate likely needed for his state re-election campaign so that they could use
5 the excess funds in a bid for higher office, most likely U.S. Senate. Thereafter, between
6 November 2002 and February 2003, the Candidate and Burchfield spent \$23,860 in state
7 campaign funds to pay for start-up expenses related to the U.S. Senate campaign. These
8 expenses included payments to the Committee's federal fundraising consultant Cunningham,
9 Harris & Associates ("CHA") and to a consultant who provided speechwriting assistance as well
10 as payments for salaries and housing allowances for staff who worked on the federal campaign,
11 stamps, supplies, phone line deposits, and printing expenses.

12 11. The Candidate and Burchfield together spent the state funds, which benefited the
13 campaign by serving as a source to finance start-up expenses. In doing so, their general practice
14 was for Burchfield to prepare each check for the Candidate's signature since the Candidate had
15 signatory authority on the state campaign account. According to evidence obtained by the
16 Commission, at the time they used the state funds for the federal campaign, Burchfield knew that
17 using state campaign funds for a federal campaign was prohibited by law as a result of his own
18 research and through consultation with a principal at CHA.

19 The Committee's Failure to Disclose Its True Finances

20 12. Although the Committee had a named treasurer, for all intents and purposes,
21 Burchfield performed the duties of the Committee treasurer. The Candidate gave Burchfield
22 broad authority to handle the Committee's finances, prepare and file disclosure reports with the
23 Commission, and maintain its records, particularly disbursement records. Burchfield maintained

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1 the Committee's financial and bank records, including the Committee's checkbook, bank
2 statements and the Committee's bank card with ATM/debit card functions; picked up mail from
3 the Committee's mailbox, which included contribution checks; deposited contributions into the
4 Committee bank account; made disbursements from the Committee's bank account using checks,
5 the Committee's debit card and cash obtained with the ATM card; prepared checks for the
6 Candidate's signature; and moved funds between the Committee's two bank accounts.
7 Burchfield was the only person with knowledge of the ATM card personal identification number.
8 He also prepared the Committee's disclosure reports and filed them with the Commission.

9 13. The Committee, through Burchfield, failed to disclose or inaccurately disclosed
10 \$305,440 in receipts and disbursements in the five disclosure reports filed with the Commission
11 that covered the period of January 1, 2003-March 31, 2004. Specifically, the Committee failed
12 to disclose disbursements totaling \$187,720 and misreported \$117,720.30 in receipts by under-
13 reporting \$6,590 in receipts in the 2003 July Quarterly Report, over-reporting a total of
14 \$26,139.90 in receipts in the 2003 April, October and Year End Reports, and in the 2004 April
15 Quarterly Report, fabricating or inflating \$49,900 in itemized contributions and failing to itemize
16 119 contributions totaling \$35,090.

17 14. Preparing and filing the Committee's disclosure reports was within the scope of
18 Burchfield's duties for the Committee. Burchfield deliberately misreported the Committee's
19 finances primarily to inflate the campaign's cash on hand so the campaign appeared more
20 financially viable. He also intentionally failed to report the use of state funds in the Committee's
21 initial disclosure report to hide the use of state funds in the federal campaign. The intentional
22 misreporting of the Committee's finances benefited the Committee by making it appear to the
23 public to be more financially sound than it was.

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1 15. The Committee failed to establish adequate financial controls, which contributed
2 to Burchfield's ability to file false disclosure reports with the Commission throughout the
3 campaign and to misappropriate funds as described below in Paragraphs 18 and 19. The
4 Committee did not properly segregate responsibilities for managing receipts and disbursements
5 and failed to reconcile the Committee's bank statements to its accounting records and FEC
6 disclosure reports.

7 16. Following the Candidate's decision to drop out of the U.S. Senate race after
8 Burchfield abruptly left the campaign on June 7, 2004, the Committee conducted a forensic audit
9 at its own expense which enabled it to file on July 1, 2005, comprehensive amendments to the
10 original disclosure reports filed by Burchfield.

11 17. As a result of Burchfield's intentional failure to properly report the Committee's
12 finances to the Commission, he pled guilty in the United States District Court, District of New
13 Hampshire on November 14, 2005 to one count of filing false statements with the Commission in
14 violation of 18 U.S.C. § 1001.

15 The Committee's Failure to Make Disbursements Exceeding \$100 by Check and the
16 Conversion of Campaign Funds for the Personal Use of Campaign Staff
17

18 18. Between February 2003 and May 2004, Burchfield made 64 ATM withdrawals
19 from the Committee's bank accounts totaling \$10,445. According to evidence obtained by the
20 Commission, most of these cash withdrawals were used to pay for a mixture of personal and
21 campaign expenses. Two committee staffers verified that cash was used in some instances to
22 pay for expenses such as lunches and repairs to a video camera. Twenty-nine of the ATM
23 withdrawals, totaling \$7,042, exceeded \$100. The Committee provided no records of the cash
24 disbursements and failed to report them in its disclosure reports to the Commission.

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1 19. According to evidence obtained by the Commission, four of the aforementioned
2 ATM cash withdrawals were used solely to pay for Burchfield's personal expenses. In addition,
3 Burchfield also used the Committee bank card as a debit card to pay for personal expenses. All
4 told, Burchfield converted approximately \$10,380 of campaign funds to his personal use.

5 20. On or about March 4, 2004, Burchfield also gave checks, totaling \$200 each, to
6 two Committee staffers to purchase clothing.

7 21. None of the ATM cash withdrawals or debit card transactions that were used to
8 pay Burchfield's personal expenses or that were used to pay for a mixture of his personal
9 expenses and campaign expenses was disclosed in the Committee's FEC disclosure reports. A
10 relatively small percentage of the Committee's total misreporting is attributable to Burchfield's
11 conversion of campaign funds to personal use.

12 The Committee's Failure to Maintain Records

13 22. Maintaining the Committee's financial records was also within the scope of
14 Burchfield's duties. Burchfield kept inadequate disbursement records from the beginning of the
15 campaign until his departure on June 7, 2004, which is illustrated by the fact that the Committee
16 was unable to file comprehensive amendments to disclosure reports for more than a year after the
17 Candidate withdrew from the race following Burchfield's departure from the campaign.

18 V. Violations

19 1. The Committee violated 2 U.S.C. § 4411(e)(1)(A) and 11 C.F.R. § 110.3(d) by
20 accepting undisclosed, impermissible funds from Cohen's state campaign account and using
21 them in his U.S. Senate campaign.

22 2. The Committee violated 2 U.S.C. § 434(b) by failing to file accurate reports of its
23 receipts and disbursements.

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3. The Committee violated 2 U.S.C. § 432(c) by failing to maintain proper documentation for disbursements.

4. The Committee violated 2 U.S.C. § 432(h) by making cash disbursements in excess of \$100.

5. The Committee violated 2 U.S.C. § 439a(b) by using campaign funds for staffers' clothing purchases.

VI. The Committee will take the following actions:

1. The Committee will pay a civil penalty to the Federal Election Commission in the amount of Ten Thousand Dollars (\$10,000), pursuant to 2 U.S.C. § 437g(a)(5)(A). The Committee has represented that it possesses no significant funds, has sold all of its assets, and is unable to raise additional funds because it has ceased operations. If evidence is uncovered indicating the Committee's financial condition is not as represented, a total civil penalty of \$50,000 and a disgorgement of \$23,860 to the U.S. Treasury shall be immediately due. These figures are the amounts that the Commission would ordinarily seek for the violations at issue.

2. Except as provided in Paragraph VI.1 herein, the Committee will disgorge \$23,860 to the U.S. Treasury, an amount equal to the impermissible use of state campaign funds in the U.S. Senate campaign, if and when it is financially able to do so.

3. The Committee will cease and desist from violating the Act.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

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1 VIII. This agreement shall become effective as of the date that all parties hereto have
2 executed same and the Commission has approved the entire agreement.

3 IX. The Committee shall have no more than 30 days from the date this agreement
4 becomes effective to comply with and implement the requirement contained in this agreement
5 and to so notify the Commission.

6 X. This Conciliation Agreement constitutes the entire agreement between the parties
7 on the matters raised herein, and no other statement, promise, or agreement, either written or
8 oral, made by either party or by agents of either party, that is not contained in this written
9 agreement shall be enforceable.

10 FOR THE COMMISSION:

11 Thomasenia Duncan
12 General Counsel
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14

15 BY: Ann Marie Terzakian by KMC 12-21-07
16 Ann Marie Terzakian Date
17 Associate General Counsel
18 for Enforcement
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21 FOR THE RESPONDENTS:

22
23
24
25
26 [Signature]
27 Bara Reese
Counsel for Respondents

12/12/07
Date

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